IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION

Doc. 139 Att. 13

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE PET FOOD PRODUCTS LIABILITY LITIGATION	:	CASE NO. MDL DOCKET NO. 1850
	:	
	:	**DECLARATION OF ADRIAN PALENSKY IN SUPPORT OF DEFENDANTS' MOTION TO ADOPT THE RETRIEVAL PLANS FOR ORGANIZED RECALLED PRODUCT THAT WERE RECOMMENDED BY DEFENDANTS' EXPERT**

STATE OF MISSOURI)
) ss:
COUNTY OF ST. LOUIS)

Adrian Palensky, being first sworn upon oath, says:

1) I am a Director of Quality Assurance for Defendant Nestlé Purina PetCare Company ("Nestlé Purina"). I am making this Declaration based upon personal knowledge and am competent to testify to the matters stated below.

2) In my position as a Director of Quality Assurance for Nestlé Purina, my duties and responsibilities include, among other things, oversight of storage and storage security for recalled wet pet food.

3) In March, April and May 2007, Purina recalled certain pet food that may have been tainted with contaminated wheat gluten purchased from Chem Nutra, Inc. As a result, Purina is holding a tremendous amount of recalled pet food.

Exhibit E to Retrieval Motion

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4) One category of recalled pet food Purina is currently storing is referred to as "Organized Product." The Organized Product is pet food contained in cans or pouches that is in cases and stored on full or partial pallets in Purina's warehouses or in third party warehouses being rented by Purina. This pet food either never left Purina's possession or was distributed to retailers and returned to Purina in unopened cases or pallets. Purina currently is storing approximately 606,056 (ALPO) and 117,778 (Mighty Dog) cases of Organized Product, amounting to approximately 8 million cans ALPO (based on 13.2 cans per case weighted average figured using the known full case quantities) and 3 million pouches Mighty Dog.

5) To date, Purina has not disposed of, and continues to store, the approximately 606,056 (ALPO) and 117,778 (Mighty Dog) cases of Organized Product in its possession, as follows:

Plant Locations	ALPO Cases	Mighty Dog Cases
Davenport	10397	2251
OK City	10284	1473
Crete	280644	57102
Flagstaff	16162	3957
Denver	2258	600
Clinton	231	0
Dunkirk	578	769
Mechanicsburg	651	778
Allentown	123711	48694
Atlanta	161140	2154
Total	606056	117778

6) A "SKU date" represents all product of a particular recipe that is produced in a given production run at a Purina plant on a given day.

7) Purina produces its pet food product in batches of the same recipe, and more than one batch usually is used to manufacture the product within a particular SKU date. Typically, there are sixteen batches per SKU date, but the number of batches can be greater than 50 per SKU date.

8) At the beginning of Purina's production process, the raw materials for each batch are thoroughly mixed. The mixed recipe then is placed into cans (Mighty Dog pouches are produced by Menu). Cans are placed into cases in sequential order and the cases then are placed onto pallets in sequential order. As a result, the last case placed on the top of one pallet will contain units that were produced immediately before the units in the first case placed on the bottom of the next pallet.

9) Typically, there are 8 to 48 units per case of product and 96 to 240 cases per pallet, with the larger number of cases per pallet being associated with cases with a lower number of units.

10) Specifically, Purina has approximately eight variations on the number of cases per pallet depending on the size of the units in the cases, which are as follows:

Product Name	Cans/Pouches Per Case	Size	UPC
ALPO PC BEEF	24	13.2 oz	00360
ALPO PC BEEF LIVER	24	13.2 oz	00361
ALPO PC TURKEY BACON	24	13.2 oz	00363
ALPO PC GOURMET	24	13.2 oz	00365
ALPO PC BEEF BACON /CHEESE	24	13.2 oz	00366
ALPO PC LONDON GRILL	24	13.2 oz	00368
ALPO PC CHICKEN VEGETABLE	24	13.2 oz	04013
ALPO PC BEEF & RICE	24	13.2 oz	07031

ALPO PC LAMB & RICE	24	13.2 oz	07032
ALPO PC LAMB & RICE	24	13.2 oz	07032
ALPO PC BEEF	12	22 oz	00461
ALPO PC CHICKEN	12	22 oz	00463
ALPO PC GOURMET	12	22 oz	00469
ALPO PC LAMB & RICE	12	22 oz	07033
ALPO PC BEEF & RICE	12	22 oz	07034
ALPO PC LONDON GRILL	12	22 oz	74331
ALPO PC BEEF STEW	12	22 oz	74333
ALPO VP	12	13.2 oz	18342
ALPO Beef	24	13.2 oz	25712
ALPO Beef	4 pk 6ct	22 oz	24519
ALPO VP	8 ct	22 oz	86222
MIGHTY DOG POUCH VP	24	5.3 oz	67411
MIGHTY DOG TARGET BUNDLE PK	48	5.3 oz	53146
MIGHTY DOG BEEF MULTI PK	24	5.3 oz	24116

11) The units produced in one individual batch can fill multiple pallets.

The process for placing product into units, units into cases and cases onto pallets is very fast. Although the production pace depends on the Purina plant in which the product is produced and the size of the unit being produced, a case typically is filled in seconds and a pallet typically is filled 2 to 3 minutes. For a 13.2 oz. can sized product, Purina fills approximately 600 cans per minute. For a 22 oz. Can size product, Purina fills approx. 300 cans per minute.

12) Purina's production process is designed to provide high quality pet foods to customers. One way the quality is measured is through a low percent of variation in the product. Typically, there is no variation in Purina's product from unit to unit within the same batch, and the variation from batch to batch is minimal.

13) It is most practical at this time for Purina to select and store intact cases of product rather than to open cases and organize and store individual cans from cases. This method will minimize human error that could occur in the selection and storage of the retrieved product.

14) The safest way for Purina's employees to retrieve cases from pallets is for them to retrieve the cases from the top of the pallet, as opposed from within different places in the pallet. The selection of cases would pose a greater risk of injury if pallets (which can be stacked up to 4 to 5 pallets high) were required to be broken down and cases selected from within each pallet. There is a risk that cases above will break and/or fall, possibly causing injury to Purina's employees. This risk does not exist if cases are retrieved only from the top of a pallet, as such cases can easily be identified and selected from the pallet without needing to break down the pallet.

15) I previously conveyed the information in this declaration to Dr. McCabe.

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Adrian Palensky

ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss:
COUNTY OF ST. LOUIS)

The foregoing declaration was acknowledged before me this 18th day of March, 2008, by Adrian Palensky.

Witness my hand and official seal.

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Notary Public
My commission expires: Sept. 21, 2010

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

DEBRA ROEHRIG
My Commission Expires
September 21, 2010
St. Louis City
Commission #06942076